*THE HON'BLE MR. JUSTICE BILAL NAZKI

+Writ Petition No.11911 of 1994

%Dated 12-08-2004

#Between:

Satyam Reddy,

S/o. Gangareddi,

Aged 41 years, Agriculture,
R/o Vannel (K), Nandipet (M),
Nizamabad District. .. Petitioner

And

The Special Dy.Collector,

L.A-cum-LOC Unit SRSP.,
Pochampad District, Nizamabad.

.....RESPONDENT

! Counsel for the petitioner: Mr. C.Ramesh Sagar

^Counsel for the respondent: G.P. for Land Acquisition

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>HEAD NOTE

?Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE MR. JUSTICE BILAL NAZKI

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..... PETITIONER

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.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction more in the nature of Writ of Mandamus declaring the proceedings in Final Memo No.C2/265/90 dated 04/06/1994 of the respondent herein as bad, illegal, and void and set aside the same and direct the respondent herein to conduct the enquiry under Sec.28-A of the L.A.Act for the purpose of re-determination of the compensation in respect of the petitioner's land bearing Sy.No.36 totally admeasuring to Ac.1.14 Gts situated at Vannel (K) (V) Nandipet (M) of Nizamabad District on the basis of the judgement and decree in OP.No.51/87 on the file of the Addl.Dist. Judge, Nizamabad and be pleased to issue any other writ or order or direction

Counsel for the Petitioner:MR.C.RAMESH SAGAR

Counsel for the Respondent: GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

Heard learned counsel for the parties and gone through the record. Counter-affidavit is not filed.

In terms of the notification under Section 4 of the Land Acquisition Act, 1894 (for short ‘the Act’) dated 09-10-1975, the land belonging to the petitioner was acquired, the award was passed on 09-10-1979 and the Land Acquisition Officer fixed the compensation at Rs.4,363/- per acre. Land of various other persons was also acquired in terms of the same notification and the award. Some of them filed an application under Section 18 of the Act for reference to the Civil Court. The learned Additional District Judge, Nizamabad, passed an award in O.P.No.51 of 1987 enhancing the compensation from Rs.4,363/- per acre to Rs.8,500/- per acre. The award was pronounced by the learned Judge on 07-12-1989. The petitioner filed an

application on

08-12-1989 before the Civil Court for obtaining certified copy of the judgment and copy was made available to him on

08-02-1990. He filed an application in terms of Section 28-A of the Act before the Land Acquisition Officer for re-determination of the amount of compensation on 27-02-1990. The Land Acquisition Officer kept the application pending for more than four years and then passed the impugned order. The application was rejected on two grounds; firstly, the petitioner was not an aggrieved person as he had accepted the award without protest and secondly, he had not filed the judgment of the court. The petitioner on affidavit stated that he has filed the copy of the judgment. It is not disputed as no counter is filed.

Now coming to the first ground on which the application was rejected by the Land Acquisition Officer, this Court finds it an irrelevant ground. Section 28-A of the Land Acquisition Act lays down as follows:

> **"28-A – Re-determination of the amount of compensation on the basis of the award of the court**:
>
> (1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:
>
> Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1) conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

From bare perusal of the above provision it becomes clear that this provision is available only to those persons who have not availed the remedy under Section 18 of the Act. Had the petitioner protested, then a reference under Section 18 would have been made. Section 28-A of the Act applies only to those persons who have not made an application to the Collector under Section 18 of the Act. The only limitation for re-determination on the basis of the amount of compensation under Section 28-A of the Act pertains to the period within which after the pronouncement of the award by the court, a claimant can approach the Land Acquisition Officer. He has to approach within three months of the pronouncement of the award by the Civil Court. The petitioner shall also get the time spent by him in obtaining copy of the award since on facts I am taking everything to be correct in the writ petition as no counter is filed, therefore the only conclusion, which one can come to, is that the application had been made within time. The Collector has also not stated in his memo that the application had not been made in time. For these reasons, the impugned memo is quashed and the writ petition is allowed. The Collector is directed to re-determine the basis of the amount of compensation keeping in view the award passed by the Civil Court in accordance with law.

The writ petition is accordingly allowed. No order as to costs.

12-08-2004

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Twelfth day of August, Two Thousand and four only.

Sd/-

ASST. REGISTRAR

NB:

L.R. Copies to be marked.

B/o

bsc

To

1. One Fair copy to the Honourable Mr. Justice Bilal Nazki
(for His Lordship's kind perusal)

2. The Special Dy.Collector,

L.A-cum-LOC Unit SRSP.,
Pochampad District, Nizamabad.

3. 2 CCs to Govt. Pleader for Land Acquisition, High Court Buildings, Hyderabad (OUT)

4. 8 LR copies.

5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

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